

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: MDL Docket No 04-1606 VRW
DEEP VEIN THROMBOSIS ORDER

This Document Relates To:

05-1896 VRW

On June 24, 2008, the court granted defendant Delta Airlines's ("Delta") motion pursuant to 28 USC § 1927 for excess costs, expenses and attorney fees against the O'Reilly & Danko law firm. Doc #47 at 13. The court directed Delta to submit substantiation of the fees and costs it incurred as a result of O'Reilly & Danko's reckless post-filing prosecution of a lawsuit on behalf of Stephen and Valerie Marsh, individuals who were never informed that a lawsuit had been filed on their behalf. Doc #47 at 12-13. The court considered, but did not grant, sanctions against the O'Reilly & Danko law firm and its attorneys under FRCP 11 for

1 the improper filing of a complaint against Delta on behalf of the
2 Marshes. Doc #47 at 9-10. Instead, the court focused on the
3 multiplication of these proceedings by the unreasonable failure of
4 the O'Reilly & Danko lawyers to communicate with, and obtain
5 information from, their clients. Had the lawyers communicated with
6 the Marshes, Delta would have avoided expending unnecessary
7 attorney time and effort and expenses. Hence, the court directed
8 Delta to request reimbursement only for fees and costs it would not
9 have incurred but for the continued prosecution of this lawsuit
10 after its initial filing and not for pro-rated portions of fees for
11 work product that was used on other deep vein thrombosis ("DVT")
12 cases. Doc #47 at 12-13. Delta submitted a request for \$15,388.10
13 in fees and costs on July 8, 2008. Doc #49 at 2. The O'Reilly &
14 Danko law firm submitted objections to Delta's request on July 15,
15 2008. Doc #52.

16 Delta's request includes \$13,967.00 in attorney fees.
17 Doc #49 at 2. This amount comprises fees for 65.2 hours of work.
18 Doc #50 at 3 ¶12. Delta submitted client invoices indicating that
19 the 65.2 hours was spent on tasks specific to this case, including
20 litigation of Delta's motion for sanctions. Doc #50 at 23-49. The
21 court concludes 65.2 hours is a reasonable amount of time for Delta
22 to have spent on the Marsh case as a direct result of O'Reilly &
23 Danko's unreasonable multiplication of the proceedings therein.

24 The court also determines that the hourly rates requested
25 by Delta are reasonable. The attorney hours for which Delta seeks
26 reimbursement were incurred by Richard Grotch and Rachel E Carr.
27 Doc #50 at 2 ¶5. Grotch, an attorney with over 21 years of
28 experience, billed his time at \$195 per hour before July 12, 2005

1 and \$225 per hour thereafter. Applying the principles set forth in
2 In re HPL Technologies, Inc, Securities Litigation, 366 F Supp 2d
3 912, 921-922 (ND Cal 2005) (Walker, J), the court determines that
4 this hourly rate is reasonable. Under the 2008 Laffey matrix
5 (adjusted upward for the cost of living in the San Francisco Bay
6 area), an attorney with 21 years of experience would bill
7 approximately \$482.24 per hour. See United States Attorney's
8 Office for the District of Columbia Laffey Matrix 2003-2008,
9 [http://www.usdoj.gov/usao/dc/Divisions/Civil_](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html)
10 [Division/Laffey_Matrix_7.html](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html), last visited August 9, 2008; U S
11 Office of Personnel Management 2008 Salary Tables,
12 <http://opm.gov/oca/08tables/>, last visited August 9, 2008.
13 Grotch's requested hourly rate is far below what the court would
14 consider reasonable. Carr has over two years of experience as an
15 attorney. See State Bar of California Attorney Search,
16 <http://members.calbar.ca.gov/search/member.aspx>, last visited
17 August 9, 2008 (Carr did not submit information on how many years
18 she has practiced, so her bar admission date of January 9, 2006 was
19 used as a proxy). Carr billed time spent on this case at a rate of
20 \$185 per hour. A similarly experienced lawyer in the San Francisco
21 Bay area bills \$235.64 per hour under the Laffey matrix; Carr's
22 requested rate is reasonable. Having found the time spent on this
23 case and the hourly rate requested to be reasonable, the court
24 determines that Delta's fee request of \$13,967.00 is reasonable.

25 Delta also requests costs of \$1,421.10, incurred for
26 computerized legal research, PACER charges and express delivery
27 charges. Doc #50 at 4 ¶13. These charges are substantiated by the
28 client invoices submitted by Delta, see Doc #50 at 42, 48, and the

1 court finds them to be reasonable.

2 O'Reilly & Danko objects to Delta's request for fees and
3 costs on several grounds, none of which the court finds
4 meritorious. First, O'Reilly & Danko notes that in its March 5,
5 2008 motion for sanctions, Delta estimated that it was entitled to
6 \$12,307.16 in fees and costs. Doc #52 at 2. O'Reilly & Danko
7 argues that because that amount included prorated fees for work
8 used on other DVT cases (fees the court has determined are not
9 reimbursable), the amount requested today should be less than the
10 amount requested in March. Doc #52 at 2; see also Doc #33 at 4.
11 O'Reilly & Danko overlooks the fact that much of the work for which
12 Delta seeks reimbursement occurred after March 5, 2008 due to
13 O'Reilly & Danko's opposition to sanctions, a circumstance Delta
14 foresaw even in its March 5, 2008 estimation of fees. See Doc #33
15 at 4 ¶15 ("This amount does not include the finalizing of the
16 motion and supporting papers; nor does it include time expended to
17 review any opposition to this motion, to draft a reply, and to
18 attend a hearing on the motion. Therefore, the actual fee and cost
19 figures can be expected to increase.)

20 O'Reilly & Danko also challenges Delta's documentation of
21 its fees and costs, arguing that the amounts shown on the invoice
22 do not add up to the amounts requested. Doc #52 at 2. O'Reilly &
23 Danko apparently did not spend sufficient time or effort examining
24 the invoices, because the line items on the invoice that have not
25 been redacted do sum to Delta's requested fee. See Doc #50 at 23-
26 49. The cost request is largely for electronic research expenses.
27 These costs are substantiated by line item charges summing to
28 \$2,139.12, see Doc #50 at 42, 48, which is more than the \$1,421.10

1 requested by Delta. Grotch has attested that he only seeks
2 reimbursement for costs Delta would not have incurred but for the
3 continued prosecution of the Marsh matter, Doc #50 at 4 ¶4, and
4 apparently he reduced the cost request to account for electronic
5 research that may not be reimbursable. It was appropriate and
6 reasonable for Grotch to do so.

7 O'Reilly & Danko also argues that it is unreasonable for
8 Delta to request fees when a large portion of the request is for
9 fees on fees. Doc #52 at 2-3. To support this argument, O'Reilly
10 & Danko cite Cancio v Financial Credit Network, Inc, 2005 US DIST
11 LEXIS 13626 at 16 (N D Cal 2005)(Henderson, J), a case in which a
12 judge in this district determined that the hours spent on a party's
13 motion for attorney fees were not reasonably expended and thus were
14 not compensable. But in that case, the court found that the
15 "issues raised by [the] fee application are neither novel nor
16 complex. * * * the structure of the Motion for attorney's fees was
17 largely boilerplate." Cancio, 2005 US DIST LEXIS at *16-17. This
18 case, by contrast, raised the novel question whether and on what
19 grounds the unauthorized filing of a lawsuit and its continued
20 prosecution by a plaintiff's attorney is sanctionable. O'Reilly &
21 Danko's vigorous opposition to sanctions necessitated a non-
22 boilerplate response by Delta. It was not unreasonable for Delta
23 to spend a substantial amount of attorney time to establish that
24 O'Reilly & Danko's conduct was sanctionable and that Delta was
25 entitled to fees and costs.

26 Finally, O'Reilly & Danko argues that legal research
27 costs are not recoverable. Doc #52 at 3. O'Reilly & Danko cites
28 Ladas v California Auto Assn, 19 Cal App 4th 761, 767 (1993), to

1 support this argument, but that case deals with taxable costs
2 awarded to a prevailing party under Cal Code Civ Proc § 1033.5 and
3 is inapplicable to this situation. See Ladas, 19 Cal App 4th at
4 776. Computerized legal research costs are compensable when
5 reasonably incurred. See Trustees of Const Indus and Laborers
6 Health and Welfare Trust v Redland Ins Co, 460 F 3d 1253, 1259 (9th
7 Cir 2006)(holding that electronic legal research costs are
8 compensable under reasonable attorney fees and cost provision of 29
9 USC § 1132(g)(2)(D)).

10 Accordingly, the court awards Delta \$15,388.10 for
11 reasonably incurred attorney fees and costs under 28 USC § 1927.
12 O'Reilly & Danko is ORDERED to pay Delta \$15,388.10 no later than
13 September 10, 2008.

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15 IT IS SO ORDERED.

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18 VAUGHN R WALKER
19 United States District Chief Judge
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